IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO.32 of 2000 along with CWP Nos. 135, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 215, 216, 217, 218, 219, 235, 240, 241, 242, 243, 244, 245, 246, 247, 249, 25, 250, 253, 254, 255, 256, 268, 269, 270, 272, 273, 274, 275, 290, 291, 292, 318, 33, 34, 35, 355, 56, 57, 619, 789, 91, 92, 93, 954 of 2000 and CWP No.91 of 2001.

Reserved on: 15. 5. 2007.

Date of decision: 6th July , 2007.

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1. CWP No.32 of 2000.

Goel Bus Service. ……. **Petitioner.**

Vs.

State of H.P. and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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2. CWP No.135 of 2000.

Munshi Ram. ……. **Petitioner.**

Vs.

State of H.P. and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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3. CWP No.196 of 2000.

Sharif Mohammad Akram. ……. **Petitioner.**

Vs.

Union of India and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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4. CWP No.197 of 2000.

Rajesh Sharma. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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5. CWP No.198 of 2000.

Chaman Lal. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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6. CWP No.199 of 2000.

Rajesh Kumar. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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7. CWP No.200 of 2000.

Sunil Dutt. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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8. CWP No.201 of 2000.

Diwan Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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9. CWP No.202 of 2000.

Kawal Kishore. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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10. CWP No.203 of 2000.

Musafir Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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11. CWP No.204 of 2000.

Kaushal Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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12. CWP No.205 of 2000.

Himani Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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13. CWP No.206 of 2000.

Shyama Kali Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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14. CWP No.207 of 2000.

Ravi Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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15. CWP No.208 of 2000.

Pradeep Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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16. CWP No.209 of 2000.

Kaushal Bus Service. **……. Petitioner.**

Vs.

Union of India and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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17. CWP No.215 of 2000.

Aman Bus Service. ……. **Petitioner.**

Vs.

Union of India and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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18. CWP No.216 of 2000.

Hari Bus Service. ……. **Petitioner.**

Vs.

Union of India and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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19. CWP No.217 of 2000.

Shiv Shakti Bus Service. ……. **Petitioner.**

Vs.

Union of India and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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20. CWP No.218 of 2000.

Madan Mohan Sharma. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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21. CWP No.219 of 2000.

Manisha Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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22. CWP No.235 of 2000.

Kangra Roadways. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Shrawan Dogra, Advocate, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with
Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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23. CWP No.240 of 2000.

Khem Chand. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with
Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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24. CWP No.241 of 2000.

Shayama Kali Transport Cooperative Society Ltd. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with
Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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25. CWP No.242 of 2000.

Shyama Kali Transport Cooperative Ltd. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with
Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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26. CWP No.243 of 2000.

Shyama Kali Transport Cooperative Ltd. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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27. CWP No.244 of 2000.

Shyama Kali Transport Cooperative Ltd. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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28. CWP No.245 of 2000.

Shyama Kali Transport Cooperative Ltd. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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29. CWP No.246 of 2000.

Gian Chand. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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30. CWP No.247 of 2000.

Shivalik Unemployed Cooperative Ltd. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners**:** **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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31. CWP No.249 of 2000.

Jamil Akhtar. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners**:** **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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32. CWP No.25 of 2000.

New Prem Bus Service. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners**:** **Mr. Ajay Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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33. CWP No.250 of 2000.

Bharat Taj Bus Service. ……. Petitioner.

Vs.

Union of India and others. ……. **Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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34. CWP No.253 of 2000.

Jasbir Singh. ……. **Petitioner.**

Vs.

State of H.P. and others. ……. **Respondents.**

For the petitioners: **Mr. Bimal Gupta, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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35. CWP No.254 of 2000.

Mohit Sharma. ……. **Petitioner.**

Vs.

State of H.P. and others. ……. **Respondents.**

For the petitioners: **Mr. Bimal Gupta, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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36. CWP No.255 of 2000.

Devinder Singh. ……. **Petitioner.**

Vs.

State of H.P. and others. ……. **Respondents.**

For the petitioners: **Mr. Bimal Gupta, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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37. CWP No.256 of 2000.

Bhajan Singh. **……. Petitioner.**

Vs.

State of H.P. and others. **……. Respondents.**

For the petitioners: **Mr. Bimal Gupta, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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38. CWP No.268 of 2000.

Feroz Khan. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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39. CWP No.269 of 2000.

Narender Singh Parmar. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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40. CWP No.270 of 2000.

M/s Jogindera Transport. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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41. CWP No.272 2000.

The Himachal Alp Sankhayak Cooperative Transport Society ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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42. CWP No.273 of 2000.

Ranjeet Singh. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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43. CWP No.274 of 2000.

Parvez Khan. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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44. CWP No.275 of 2000.

Chauhan Travel. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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45. CWP No.290 of 2000.

M/s Kailash Giri Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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46. CWP No.291 of 2000.

M/s Him Giri Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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47. CWP No.292 of 2000.

M/s New Kailash Giri Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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48. CWP No.318 of 2000.

Madan Mohan Sharma. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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49. CWP No.33 of 2000.

M/s Bharti Bus Service. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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50. CWP No.34 of 2000.

Kullu Transport Company. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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51. CWP No.35 of 2000.

Kullu Valley Ex-Servicemen Cooperative Society ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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52. CWP No.355 of 2000.

M/s Ishwar Dass Balak Roopi Bus Service ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma & Mr.Neel Kamal Sood, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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53. CWP No.56 of 2000.

Smt. Bimla Thakur. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. Ajay Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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54. CWP No.57 of 2000.

M/s D.P. Deluxe Coop. Transport Society Ltd. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. Ajay Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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55. CWP No.619 of 2000.

Rana Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Sanjeev Kuthiala, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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56. CWP No.789 of 2000.

Padha Bus Service. **……. Petitioner.**

Vs.

Union of India and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.

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57. CWP No. 91 of 2000.

Dev Bhumi Transport . **……. Petitioner.**

Vs.

State of H.P. and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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58. CWP No.92 of 2000.

Rajesh Sharma. **……. Petitioner.**

Vs.

State of H.P. and others. **……. Respondents.**

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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59. CWP No.93 of 2000.

Jyoti Bus Service. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

Mr. Sandeep Sharma, Asstt. Solicitor General,

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

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60. CWP No.954 of 2000.

Johny Mehta and Others. ……. Petitioners.

Vs.

State of H.P. and others. ……. Respondents.

For the petitioners: **Mr. M.M.Khanna, Sr. Advocate with Mr. Rakesh Sharma, Advocates, for the petitioners.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M.Bisht, Dy.A.G. for respondents –State.**

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61. CWP No.93 of 2001.

Manoj Kumar. ……. Petitioner.

Vs.

Union of India and others. ……. Respondents.

For the petitioners: **Mr. Surinder Sharma, Advocates, for the petitioner.**

For the respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General,**

Mr. Y.P.S. Dhaulata & Mr. Ravinder Thakur, Central Govt. Counsel for respondent-UOI.

Mr. M.S. Chandel, Advocate General with Mr. .M.Bisht, Dy.A.G. for respondents –State.

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

Surinder Singh, J.:

The petitioners are engaged in the business of Transport and are having various route permits for their respective buses/stage carriages for different routes in the State.

In the year 1972 the State of Himachal Pradesh enacted "The Himachal Pradesh Motor Vehicles Taxation Act" (hereinafter to be referred as the Act).

In this act the amendments were brought by incorporating **Section 3-A, 3-B and 3-C, vide** amending **Act No15 of 1999** with the following object and reasons as indicated **in** Bill No.10 of 1999:-

> "Developed roads and bridges constitute arteries of a health economy. Himachal Pradesh being a hill State, the importance of roads, their construction and maintenance can hardly be over emphasized as a vital trading facility. Each year, the government has to incur considerable part of its budget on construction, maintenance and development of roads and bridges in the State. Since it is essential to finance these activities it is considered necessary to levy road tax on transport vehicles used or kept for use on public roads in Himachal Pradesh."

The amendment Act aforesaid was passed, it received the assent of the Governor and became law. Now, Sections 3; 3-A to 3-C of the Act reads as under:-

Section 3(1) reads as under:-

> "Subject to the other provisions of this Act, on and from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 1972, there shall be levied and collected on-
>
> a) all motor vehicles described in column (2) of Schedule-I and used or kept for use in Himachal Pradesh, a tax at the rate specified in the corresponding entry in column (3) of Schedule-I;

Whether the reporters of the local newspapers are allowed to see the judgment? Yes.

b) all motor vehicles described in column (2) of Schedule-II and used or kept for use in Himachal Pradesh,-

(i) on their first registration in Himachal Pradesh, a one time tax at amount specified in the corresponding entry in column (3) of Schedule-II;

(ii) the same having been earlier registered in Himachal Pradesh or in any other State, then having regard to the date of their first registration in Himachal Pradesh or, as the case may be in that other State, a one time tax at the amount specified in the respective columns (3) to (12) of Schedule-II.

(Sub Section (2) is omitted vide H.P. Motor Vehicles Taxation (Amendment) Act, 1999).

"3-A. Levy of Special Road Tax:

(1) In addition to the tax levied under Section 3 on and from the Commencement of Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 1999, there shall be levied, charged and paid to the State Government, a special Road Tax on all transport vehicles specified in column 2 of Schedule III, used or kept for use in Himachal Pradesh, and , at such rates as may be specified by the State Government by notifications; but not exceeding the rates specified in column (3) of Schedule III of this Act.

(2) The rates of special road tax, as may be specified under sub-section (1), in respect of stage carriages shall be applicable to and charged on the entire distance covered as per time table fixed by the Regional Transport Authority.

(3) Where a Transport vehicle is plied without any valid permit or in any manner not authorised by the permit to be plied, there shall be levied, charged and paid to the State Government further special road tax in addition to the tax payable under sub-section (1), on such vehicles at the rates as may be specified by the sate Government, by notification, but not exceeding the rates specified in column (3) of Schedule III of this Act.

(4) Where a Transport vehicle is registered in a State other than the State of Himachal Pradesh, enters and is used on any public road, or kept for use, in the State of

Himachal Pradesh, the special road tax shall become chargeable, on such entry in the specified manner.

Explanation:

For the purpose of Special Road Tax levied under this Act, transport vehicles shall include non-transport vehicles when used as transport vehicles by the owner.

3-B. Establishment of Fund for the payment of ex-gratia grant to a passenger:

(1) The State Government shall establish a fund to be called the "State ex-gratia grant to a passenger fund", and there shall be credited thereto all sums of money paid to it or all amount of surcharge already collected under Section 3-A of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 or any grants made by the State Government, for the purpose of the scheme to be framed and notified under Sub Section (2) of this Section.

(2) The State Government shall frame and notify a scheme, in the official gazette, in the prescribed manner, for the purpose of payment of ex-gratia grant to a passenger.

(3) The `State ex-gratia to a passenger Fund' shall be maintained by the Commissioner in the manner, as may be prescribed.

Explanation:-

For the purpose of this section, the expression "passenger" means any person traveling in a transport vehicle, but shall not include the driver or the conductor or any employee of the owner of the vehicle traveling in a bonafide discharge of his duties in connection with the vehicle.

3-C. Power to amend the Schedule:

(1) The State Government may, subject to the conditions of previous publication, by notification –

(a) amend the rates of tax levied under Sections 3 and 3-A specified in the Schedules I, II and III; and

(b) add or delete any motor vehicle specified in Schedules-I, II and III and in respect of such vehicles specify or omit the rate of tax;

> and thereupon the said Schedules shall stand amended accordingly.
>
> Provided that the rate of tax shall not be increased, at any one time, by more than 50% of the rates specified in Schedules I, II and III, as the case may be.
>
> Provided further that such modified rates shall not be charged in respect of motor vehicles specified in Schedule-II on which one time tax has been levied and collected.
>
> (2) Every notification issued under sub-section (1) shall, as soon as may be, after it is issued, be laid on the Table of the Legislative Assembly."

Section 4 of the Act deals with declaration and payment of tax. Section 5 stipulates that when a person pays the amount of tax leviable under Section 3 & 3-A of the Act, in respect of any motor vehicles or proves to the satisfaction of the taxation authority that no such tax is payable in respect of such vehicles, the taxation authority shall issue such person a token in the prescribed form specifying therein the period for which such tax has been paid or that no such tax is payable; and specify in the certificate of registration granted in respect of the vehicles under the Motor Vehicles Act, 1939, or in the case of vehicles not registered under the Act, in a certificate in such form as may be prescribed that the tax has been paid for the period specified under clause (a) or that no tax is payable in respect of that vehicles, as the case may be. Section 6 provides for additional declaration that when a motor vehicle is used or kept for use in Himachal Pradesh is alleged or is proposed to be used in such a manner as to render registered owner or the person who has possession or control of such vehicle is leviable to the payment of additional tax under Section 7.

Further Section 7-A require the owner to furnish security. Similarly the maintenance of accounts and determination of tax is

provided in the newly inserted Section 7-B and re-determination of tax has been taken care of under Section 7-C. Section 8 provides for the service of special notice to make declaration and to pay tax and the arrears of tax are recoverable as the arrears of land revenue as provided in Section 12. Further the act also provides a mechanism for appeal revision and also for penalties etc.

The State Government had also framed the Rules under the Act called the `Himachal Pradesh Motor Vehicles Taxation Rules, 1974, hereinafter to be referred as the Rules.

It shall be relevant here to say that there is also a “Himachal Pradesh Passengers And Goods Taxation Act, 1955” and the rules have also been framed there under. Section 3 of H.P. Passengers And Goods Taxation Act deals with the Levy of tax, which provides that there shall be levied, charged and paid to the State Government a tax on all fares and freight in respect of all passengers carried and goods transported by motor vehicles at such rates not exceeding 50% of the value of the fare or freight, as the case may be, and as the government may, by notification, direct. The method of collection is provided in Section 4, providing for the collection of tax and surcharge by the owner of the motor vehicle and paid by him to the State Government in the manner prescribed. This section has the following proviso:

> “Provided further that in case of motor vehicles (including the stage or contract carriages), other than those specified in the first proviso, in which the passengers are carried, the State Government may assess the tax and surcharge at lump-sum in the manner prescribed, taking into consideration the registered capacity of the vehicle and the distance traveled or to be traveled by such motor vehicles under a permit issued to such vehicle.”

The rule made to effectuate the above proviso laid the formula for such lump-sum assessment of tax as under:-

> "Number of seats X number of scheduled kilometers X 3/5 X rate of passengers tax X rate per kilometers.
>
> Explanation:
>
> In the formula, 3/5 represents average occupancy taken at sixty percent of the number of seats."

The above proviso was assailed by the **"Nurpur Pvt. Bus Operators Union" in CWP 664 of 1991 ,** which was decided on 1.10.1992 by the High Court in their favour, the operative portion of the Judgment is as under:-

> "The discussion made by us so far leads to the conclusion that confining payment of tax under the Act to the mode of payment by lump-sum makes it invalid. We declare it to be so. However, we hold that the levy and realization of tax on the basis which has been held to be that the levy and realization of tax on the basis which has been held to be invalid by us by this Judgment for the period between April 1, 1991, and September 30, 1992 shall not stand invalidated on account of our judgment. We propose to direct that the declaration made by us today shall be applicable prospectively and with effect from October 1, 1992 alone."

The State Government felt aggrieved by the said judgment, thus filed SLP in the Supreme Court which was dismissed on 6th October, 1999. **[(1999) 9 Supreme Court cases 559]** the operative portion of the judgment of the apex court is quoted as under**:-**

> "Learned counsel for the Appellant-State submitted that the said Section 4 and Rule had been so amended having regard to surveys made and data collected by the State Government and with a view to prevent tax evasion. This may be so, but there can be no generalization of tax that can be levied under Section 3. It can only be levied with due regard to all fares in respect of all passengers carried by the particular operator. No hypothetical assumption can

be made about how many passengers an operator has carried. The amendment of the said Section 4, by the inclusion of the proviso quoted above, is beyond the scope of the said Act. It is, therefore, unnecessary to consider Rule 9, as amended, whose term also, in fact, leave the matter in no doubt."

After the judgment of the apex court, the State Government had issued the following letter to all the RTO's in the State:

"No.CT-9-150/Tpt.SRT 24771-73

Directorate of Transport,
Himachal Pradesh, Shimla-171004.
To

All the Regional Transport Officers,
In Himachal Pradesh.

Dated: Shimla-171004. 18th December, 1999.

Subject: Imposition of Special Road Tax.

Sir,

The Government of Himachal Pradesh has decided to replace Passenger Tax with Special Road Tax w.e.f. 1-1-2000 from the stage carriage operators. It has been decided by the Government to impose the Special Road Tax on the basis of road mileage held by the Himachal Road Transport Corporation and the private stage carriage operators for each road by bifurcation the mileage on National Highway's State Highway's and Rural Roads. This information, on prescribed declaration form has to be submitted by HRTC and private stage carriage operators for each route.

A copy of declaration form is enclosed herewith for necessary action. You are requested to get these declaration forms completed from HRTC and private stage carriage operators for each route to asses the Special Road at the level of Regional Transport Officer's before 30-12-99 so that the assessment could be started from Ist January, 2000. The Special Road Tax to be collected in advance for each route 7th of each commencing month and any violation is dealt with strictly in accordance with the provision of Himachal Pradesh Motors Vehicles Taxation Act, 1972. Copy of which is enclosed for ready reference.

Director Transport,
HP, Shimla-171004.

Copy:-

1. The Commissioner-cum-Secretary (Transport) to the Government of Himachal Pradesh, Shimla-2 for favour of information.
2. Managing Director, HRTC, Shimla-171003 for favour of information and immediate necessary action.

Director Transport,
HP, Shimla-171004."

Thereafter on 23rd December, 1999, the State Government issued notification No.TPT-A (3)/98 as follows:-

"Government of Himachal Pradesh,
Department of Transport.

No.TPT-A (3)/98 Dated Shimla-2, 23rd Dec.1999.

NOTIFICATION:

In exercise of the powers conferred by sub section (1) of section 3-A of the Himachal Pradesh Motor Vehicle Taxation Act, 1972 (Act No.4 of 1973), the Governor, Himachal Pradesh is pleased to order on or from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 1999, a Special Road Tax shall be levied, charges and paid to the State Government on all the following transport vehicles used or kept for use, in Himachal Pradesh at the following mentioned rates:-

		52-Seater Buses			Mini Buses		
Sr.No.	Details of transport vehicles	National Highways (Inter-state routes) Rate of tax in paise per seat per Km.	State High ways Rate of tax in paise per seat per Km.	Other Roads Rate of tax in paise per seat per Km.	National Highways (Inter-State routes) Rate of tax in paise per seat per Km.	State High ways Rate of tax in paise per seat per Km.	Other Roads Rate of tax in paise per seat per Km.

`1.	Ordinary Services	9.57	8.61	7.66	7.66	6.70	5.74
2.	Express/Night Services	11.96	10.76	9.57	8.37	8.37	7.17
3.	Semi Deluxe bus services	14.35	12.91	11.49	11.49	10.5	8.61
4.	Deluxe bus	19.14	17.22	15.32	15.32	13.4	11.48

2. The rates of above special road tax will be applicable to the distance covered during day time as per time table fixed by the Regional Transport Officers.

3. The Governor is further pleased to order that the special road tax so levied, charged and paid after exemption of two off days/holidays for inspection and repairs of motor vehicles every month.

By Order

Sutanu Behuria,
Secretary (Transport),
Himachal Pradesh Government.

Endst. No.TPT-A(3)3/98 Dated Shimla-2, 23rd December, 1999."

The above letter and the notification show that there are different rates for National/ State Highways and rural roads, which further provides different rates for ordinary and mini buses. Thereafter the Government received representations and a meeting was held between some of the Operators and the Secretary Transport and thereafter decision was taken.

"Negotiations were held with Private Bus Operators on 31st December, 1999 regarding rates of SRT. The following decisions taken would be applicable w.e.f. 1.1.2000:-

The slab rates for calculating SRT will be based on the following occupancy rates on existing pattern of passengers tax on the present fare structure:-

a)(i)	National High way(inter-state routes)	40%
	(ii)National Highway intra-district routes:	35%
b)	State Highways:	30%
c)	Rural roads	25%
d)	Local Buses operating within a radius of 30 Km. (point to point):	22%

2. Number of days for maintenance etc. allowed would be 33 days in a year.

3. This is subject to the approval of the Cabinet.

Sd/-	Sd/-
Sh.Dev Raj Sharma,	Dr.Sutanu Behuria,
President, Private	Commissioner-cum-
Bus Operators' Union.	Secretary Transport."

Thus on partial modification of the above notification another notification No. TPT-A(3)3/98 dated 6th January, 2000 (Annexure PC in CWP No.82/2000) provided the details of the Special tax to be paid by the operators on the Transport vehicles used or kept for use in Himachal Pradesh at the lesser rates than the earlier notification dated 23.12.1999. Consequent thereupon the respondent had issued notices to the petitioner for the recovery of the tax aforesaid.

According to the petitioners the lump sum or presumptive tax could neither be levied nor recovered on presumptive occupancy.

The aforesaid settlement was between Shri Dev Raj Sharma, President of Mini Bus Operators but none of the other Unions were said to have authorised him thus not binding upon the petitioners.

The petitioners have assailed the vires of the amended provisions i.e. Sections 3-A, 3-B, 3-C and Schedule-III of the Act and also assailed the letter No.CT-9-150/TPT.SRT 24771-73 dated 18.12.1999 on the ground that they are not based upon any intelligible criteria for giving different treatment to different roads. The respondents are alleged to have done the same exercise to levy tax under the Passengers and Goods Taxation Act, 1955, to over reach the judgment in **"Nurpur Bus Operators Union's** "case supra.

Contra the case of the respondents have been that the imposition of tax on transport vehicles falls under entry 57, List II of the Seventh Schedule of the Constitution. Accordingly the amendment, aforesaid, is within the scope and competence to provide for the Special Road Tax of such vehicles to co-relate the road maintenance and tax incidence after taking into consideration of all kinds of roads. The tax is alleged to have been levied in a realistic sense and to ensure its recovery. According to the respondent the classification of the tax has been done to rationalize the tax structure to benefit all operators, because unequals cannot be treated as equals at all. It is denied that the said amendment was made to circumvent the judgment of the apex court in Nurpur Bus Operators Unions case as alleged. It has specifically been stated that Special Road Tax is levied on the vehicles and not on the passengers. Therefore, the plea raised by the petitioners is wrong.

We have heard the learned counsel for the petitioners and also Shri M.S. Chandel, learned Advocate General, in all the meticulous details.

As a matter of fact Article 246 of the Constitution deals with the distribution of legislative powers as between the Union and the State Legislators, with reference to the different lists in the 7th Schedule. The respective lists demarcate the legislative field or legislative roads. The concerned entry/ entries are the source of power to make a law.

In Gullapalli Nageshwar Rao V. Andhra Pradesh State Road Transport Corporation and another [1959 SC 308], the Constitution Bench of the apex court while relying on AIR 1953 S.C. 375 has held:-

> "The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot over-step the file or its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant."

In Nanaksar Bus Service and Others **v.** State of Haryana and Others [(1981) 2 SCC 318]**, the Supreme Court held:**

> "The federal nature of the Constitution demands that an interpretation which would allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to entrench upon State legislation and which would thereby destroy or belittle State autonomy must be rejected. Before exclusive legislative competence is claimed for Parliament by resort to the residuary power, the legislative incompetence of the State Legislature must be clearly established. Entry 97 itself is specific in that a matter can be brought under that Entry only if it is not enumerated in List II or List III and in the case of a tax if it is not enumerated in either of those lists. It is, therefore, but proper that where the competing entries are an entry in List II and Entry 97 of List I, the entry in the State List must be given a broad and plentiful interpretation."

Article 301 of the Constitution, imposes a limitation upon the exercise of legislative powers, whether by Union or the State. The object of the freedom declared by this Article is to ensure that the economic unity of India may not be broken up by internal barriers. But it is now settled that the taxes which are regulatory or compensatory in character

fall outside the purview of Article 301 aforesaid (Please see: *B.A. Jayaram and others –v- Union of India and others (1984) 1 SCC 168*). Further the matter of principle, on which taxes on mechanically propelled vehicles are to be levied falls under Entry 31 of the concurrent list, the power to tax vehicles, whether mechanically propelled or not, belongs exclusively to the State Legislature under Entry 57 of List II.

List II Entry 56, Provides "Taxes on goods and passengers carried by road or along waterways". It does not exempt National Highways, so declared by the law made pursuant to Entry 23 and Entry 24 of List-I. In ***M/s International Tourist Corporations-v- State of Haryana: AIR 1981 SC 774***, the Supreme Court has held that the omission of reference to National Highways in Entry-30 and Entry 89 indicates that the subject of Passengers and Goods carried on Highways is reserved for inclusion in the State List. Taxes on passengers and goods carried on National Highways also fall directly and squarely within and are included Entry 56 of List-II. It is a fact that maintenance of the Highways other than the National Highways is the exclusive responsibility of the State Government but the State Government is not altogether devoid of responsibility in the matter of development and maintenance of National Highway, though the primary responsibility is that of the Union Government. Since the development and maintenance of that part of the Highway which is within a municipal area is that of the State is equally important for the smooth flow of passengers and goods along the National Highway which is within municipal area, the State Government is surely facilitating the flow of passengers and goods along the National Highway. Apart from this, other facilities provided by the State Government along all Highways including National Highways, such

as lighting, traffic control, amenities for passengers, halting places for buses and trucks are available for use by every one including those traveling along the National Highways. **It cannot therefore, be said that the State governments confers no benefits and renders no service in connection with traffic along National Highways and is therefore, not entitled to levy a compensatory and regulatory tax on passengers and goods carried on the National Highways. Thus the taxes falling under this entry are of a regulatory nature, and compensatory in character, and it would not violate Article 301, even though tax so imposed is levied on passengers and goods carried from a place outside the taxing State to a place outside that State therefore, issued on different kinds of route as included in Notification dated 23-12-1999 under Section 3-(1) of the Act is not violation of the Constitution of India as argued by the learned counsel for the petitioners.**

Thus, there is a sufficient nexus between the tax and passengers carried on the National Highways to justify the imposition of the tax as contained in the notification dated 23.12.1999 issued under section 3 A of the Act. But the subsequent decision charging lesser rate of SRT contrary to the statutory notification dated 23.12.99 supra, on the basis of negotiations is contrary to the statutory provisions ' therefore, cannot be allowed to stand and is hereby quashed.

Further, the powers of State Legislature under the entry aforesaid being subject to Entry 35 of List III, if there is an existing law made by the Parliament laying down the principles on which taxes on mechanically propelled vehicles should be levied, then any State Legislation enacted under this entry must conform to these principles as

laid down in the existing laws or the earlier law made by the Parliament. If the provisions of the State Laws are repugnant to those principles, the Law made by the State Legislature must fail to the extent of repugnancy, unless reserved for the consideration of and assented to by the President. The tax under this entry is livable by the State Legislature or all vehicles suitable for use on roads, which are kept in the State, but such tax must have some nexus with the vehicles using the public roads of the State because it is compensatory in nature, even though registered under the Motor Vehicles Act. Contra the State Legislature is not competent to levy, under the present entry, an impost which is not in substance a regulatory or compensatory tax for the transport of the vehicle along the road, but a fine , for example using a vehicle without a valid permit or for issuing it in a manner not authorized by the permit, is beyond the competence of the State Legislature, thus ultravires. (Please See AIR 1992, Rajasthan 181 DB). Further on the perusal of Section 3-A (3), it transpires that the tax specified therein is in substance a fine for the alleged offence of plying a vehicle without a valid permit or in any manner not authorized by the permit to be plied. Such a penalty cannot be treated as a part of regulatory or compensatory tax and is out of the legislature competence of the State. **The nature of penalty without providing any mechanism for show cause, adjudication or the appellate authority by not providing any such mechanism, also offends the principle of natural justice. Therefore, it is held ultra vires the powers conferred in the State Legislature under Entry 56 to 57 of List-II. For this, we put our reliance on AIR 1992 Rajasthan 181 (DB).**

Now the next question which arises for determination before us before us , is whether Section 3-A (1) of the Himachal Pradesh Motor

Vehicles Taxation Act, 1972 relates to a separate charge independent to Section 3 of the Act or is an additional tax imposed on the transport vehicles within the frame work of Section 3 and can be six to ten times more than the original tax levied under Section 3?

The perusal of section 3 ibid reveals that there is one time tax levied and connected on all types of transport motor vehicles falling in the said category which are used or kept for use, but the goods carriers are not covered under this provision; whereas, the perusal of Section 3-A(1) which is added by amendment Act provides for a tax in addition to what is contained in Section 3(1) above on and from the commencement of the amendment Act, 1999, on the rates as may be specified by the State Government by notification, but not the rates as specified in column No.3 of the Act.

The details of formula now adopted is as under:-

Roads in Hill	**Basic Fare**	**Passenger Tax**	**Surcharge 20% of Passenger tax**	**Total tax of 1 K.M.**	**Fare per Passenger per Km.in paisa.**
	30.92	**15.97**	**3.18**	**59.07**	**A**
15.97 + 3.18 = 19.15					

The notification dated 6th January, 2000 and 1.4.2000 provides the rates as under:-

As per Notification of dated 6th January, 2000 as under:					
Sr.No.	**National Highways** inter	**Formula As in A**	**Occupancy fixed**	**If 19.15x 40%**	**Rate of tax will be**

	State routs) **Rate of tax in paisa per seat per k.m.**				
1(ordinary service)	**7.66**	**19.15**	**40%**	**=**	**7.66**

Sr.No.	**National Highways** inter State routs) **Rate of tax in paisa per seat per k.m.**	**Formula**	**Occupancy fixed**	**If 19.15x 35%**	**Rate of tax will be**
1(ordinary service)	**6.70**	**19.15**	**35%**	**=**	**6.70**

Sr.No.	**State Highways Rate of tax in paisa per seat per k.m.**	**Formula**	**Occupancy fixed**	**If 19.15x 30.06 %**	**Rate of tax will be**
1(ordinary service)	**5.75**	**19.15**	**30.06%**	**=**	**5.75**

Sr.No.	**Rural Roads Rate of tax in paisa per seat per k.m.**	**Formula**	**Occupancy fixed**	**If 19.15x 22%**	**Rate of tax will be**

1(ordinary service)	**4.21**	**19.15**	**22%**	**=**	**4.21**

Sr.No.	**Local buses mini buses within a radius of 30 k.m. point to point.**	**Formula**	**Occupancy fixed**	**If 19.15x 25.06 %**	**Rate of tax will be**
1(ordinary service)	**4.79**	**19.15**	**25.06%**	**=**	**4.79**

As per Notification of dated 01.04. 2000 as under:					
Sr.No.	**National Highways inter State routs) Rate of tax in paisa per seat per k.m.**	**Formula As in A**	**Occupancy fixed**	**If 19.15x 37.02 %**	**Rate of tax will be**
1(ordinary service)	**7.08**	**19.15**	**37.02%**	**=**	**7.08**

Sr.No.	**National Highways inter State routs) Rate of tax in paisa per seat per k.m.**	**Formula**	**Occupancy fixed**	**If 19.15x 33.06 %**	**Rate of tax will be**
1(ordinary service)	**5.75**	**19.15**	**33.06%**	**=**	**5.75**
Sr.No.	**State Highw**	**Formula**	**Occupancy fixed**	**If 19.15x**	**Rate of tax**

	ays Rate of tax in paisa per seat per k.m.			25.06 %	will be
1(ordinary service)	4.79	19.15	25.06%	=	4.79

Sr.No.	Rural Roads Rate of tax in paisa per seat per k.m.	Formula	Occupancy fixed	If 19.15x 20.10 %	Rate of tax will be
1(ordinary service)	3.84	19.15	20.10%	=	3.84

Sr.No.	Local buses mini buses within a radius of 30 k.m. point to point.	Formula	Occupancy fixed	If 19.15x 20.10 %	Rate of tax will be
1(ordinary service)	3.84	19.15	20.10%	=	3.84

The validity of levy of the type referred above is charged on the occupancy fixed though it is related to per seat per kilometer, as indicated in the notifications aforesaid, and the letter dated 18-12-1999 issued by the director Transport (supra) saying that the

Special Road Tax to be Collected in advance for each route 7th of each commencing month shows that it is lump sum in nature for collecting the tax despite the formula provided for calculating the tax, which is not permissible in view of the verdict of the apex court rendered in *(1999) 9 SCC 559* as such type of levy can only be charged with due regard to all the passengers carried by the particular operator and no hypothetical assumption can be made about how many passenger an operator may carry. Therefore, the notifications dated 6.1.2000 and 1.4.2000 are unsustainable, whereas, Section 3-A(1) above providing for the additional tax is not violative of Article 19(1)(g) and 301 of the Constitution, because it is either compensatory or regulatory in nature and the nexus between the subject and object of levy exists. For arriving at this conclusion, we put our reliance on the judgment s of apex Court in Maharaja Tourist Service and Others v. State of Gujarat [1992 Supp (1) SCC 489.] and Jindal Stripe Ltd. And another v. State of Haryana and other [(2003) 8 SCC 60]. However we do not find any fault in the rate of special road tax as provided for the State Carriages under Section 3-A (2) of the Act as it is based on the entire distance covered as per the time table fixed by the Regional Transport Authority.

As far as **Section 3-A(4)** is concerned, the word `kept' has not been defined in the Act, therefore it has to be understood in the ordinary popular sense, consistent with the context. The ordinary meaning of the word `keep' is to retain, to maintain or cause to stay or remain in place or to detain, or to stay or to continue in specified condition, position etc. It is something different from a mere state of transit or a course of journey through a State, therefore the word `kept' for use may not cover

a case of bare transit or temporary haltage. In that view of the matter, the tourist vehicles registered outside the State of Himachal Pradesh when brought into this State for regular use and not by way of transit it would attract taxability as prescribed under the rules. Therefore, there is nothing which goes against or offends the provisions of the Constitution.

Section 3-B ibid, provides for "the establishment of a fund for payment of ex-gratia grant to the passengers". It is astonishing to note that there is no provision in the Act for its charging and it also does not provide for the amount or percentage of the tax to be charged which would go straight to the said fund. Everything is kept in suspense. Though intention may be right but a fluid situation cannot be allowed to remain dormant to give a handle to any one to mishandle or misapply it. This provision in a way , as it appears to us ,has a connection with the preceding section more specifically to Section 3-A (2) above but no reasoning has been given by the respondents to show the nexus between the levy collected with any service or facility rendered or to be rendered. The facts have not been crystallized. Neither the respondents in their reply have stated anything nor has any scheme or rule been brought to our notice. **Therefore, in absence of any such rule or scheme, this Section though held to be constitutionally valid but remains ineffective and leaves a room for its mis-utilization. Therefore, we direct the respondents to frame a Scheme under this section within a period of six months from to-day to make this provision of the Act meaningful.**

On account of the above reasoning and the findings, we are of the view that Sections 3-A (1), (2), (4) and Section 3-C do not offend either the fundamental rights or any other provision of the Constitution of India, therefore, these are held not ultra vires of the Constitution. Since

section 3 A (3) in substance imposes a fine as held above ,therefore such a nature of penalty can neither be treated as regulatory nor compensatory tax and is out of the legislature competence of the State and the subordinate legislation, that is the notifications dated 6.1.2000 and 1.4.2000 are based upon lump sum charges of the levy thus are not in consonance with the scheme of the Constitution, therefore, these are held to be ultra vires. Further, the decision dated 1-1-2000 based upon negotiations held on 31-12-1999 relating to SRT is against the statutory provisions of the Act as stated above . Therefore, it is struck down being contrary to law.

All the petitions are disposed of in the aforesaid terms. No orders as to costs.

All the misc. applications in the writ petitions are also disposed of.

(Deepak Gupta), ACJ

July 6th, 2007. **(S.S. Thakur), J.**
(PDS/BM)